

# South Dakota Department of Human Services

<b>Policy Title:</b>	Minimum Necessary Information		
<b>Policy Number:</b>	<b>DHS-100-04</b>	<b>Version:</b>	1.0
<b>Approved By:</b>	<b>Betty Oldenkamp, DHS Secretary</b>		
<b>Effective Date:</b>	April 14, 2003		

## **Purpose:**

The intention of the DHS Minimum Necessary Information Policy is to:

- Improve the privacy of protected health information or PHI that is used or disclosed by DHS staff in the course of their work; **and**
- Ensure that DHS staff has access to the information they require to accomplish DHS' mission, goals and objectives.

*This document contains guidance for developing procedures to implement this policy.*

## **Policy:**

### **1. General**

- a. DHS will use or disclose only the minimum amount of PHI necessary to provide services to clients/patients, and only to the extent provided in DHS policies and procedures.
- b. This policy does not apply to:
  - i. Disclosures to or requests by a health care provider for treatment;
  - ii. Disclosures made to the client/patient or the client/patient's personal/legal representative about the client/patient's PHI;
  - iii. Uses or disclosures made pursuant to an authorization by the client/patient or the client/patient's personal/legal representative that are within the scope of the authorization;
  - iv. Disclosures made to the United States Department of Health and Human Services (DHHS), Office of Civil Rights, for complaint investigation, compliance review or enforcement;
  - v. Uses or disclosures required by law; **and**

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- vi. Uses or disclosures required for compliance with the HIPAA Transaction Rule or other HIPAA Administrative Simplification Rules.

## 2. Minimum Necessary Information

- a. When DHS policy permits use or disclosure of a client/patient's PHI to another entity, or when DHS requests a client/patient's PHI from another entity, DHS staff must make reasonable efforts to limit the amount of PHI to the minimum necessary needed to accomplish the intended purpose of the use, disclosure, or request.
- b. If DHS policy permits making a particular disclosure to another entity, DHS staff may rely on a requested disclosure as being the minimum necessary for the stated purpose when:
  - i. Making disclosures to public officials that are permitted under 45 CFR 164.512, and as stated in **DHS policy DHS-100-03**, "Uses and Disclosures of Client/Patient or Participant PHI," if the public official represents the information requested is the minimum necessary for the stated purpose(s). A "public official" is any employee of a government agency who is authorized to act on behalf of that agency in performing the lawful duties and responsibilities of that agency;
  - ii. The PHI is requested by another entity that is a "covered entity" under the HIPAA Privacy rules. A "covered entity" is a health plan, a health care provider who conducts electronic transactions, or a health care clearinghouse;
  - iii. The PHI is requested by a professional who is a member of its workforce or is a business associate of the "covered entity" (e.g. lawyer or accountant) for the purpose of providing professional services to the "covered entity," if the professional represents that the PHI requested is the minimum necessary for the stated purpose(s); **or**
  - iv. Documentation or representations that comply with the applicable requirements of **DHS Policy DHS-100-06**, "Uses and Disclosures for Research Purposes & Waivers" have been provided by a person requesting the PHI for research purposes.

## 3. Access and Uses of PHI

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- a. DHS will establish role-based categories that identify types of PHI necessary for DHS staff to perform their job duties. DHS program areas will identify the category of PHI needed for staff, or classes of staff, in their respective workforces to carry out their duties, and will further identify any conditions appropriate to such access. Categories will include all information, such as information accessible by computer, kept in files, or other forms of information consistent with **DHS Policy DHS-100-05**, “Administrative, Technical and Physical Safeguards”.

## 4. Routine and Recurring Disclosure of an Individual’s Information

- a. For the purposes of this policy, “routine and recurring” means the disclosure of records outside DHS, without the authorization of the client/patient, for a purpose that is compatible with the purpose for which the PHI was collected. The following identifies several examples of uses and disclosures that DHS has determined to be compatible with the purposes for which PHI is collected.
  - i. DHS will not disclose a client/patient’s entire medical record unless the request specifically justifies why the entire medical record is needed.
  - ii. Routine and recurring uses include disclosures required by law. For example, a mandatory child abuse report by DHS staff would be a routine use.
  - iii. If DHS deems it desirable or necessary, DHS may disclose PHI as a routine and recurring use to the South Dakota Attorney General’s office for the purpose of obtaining its advice and legal services.
  - iv. When federal or state agencies – such as the DHHS Office of Civil Rights, the DHHS Office of Inspector General, South Dakota Department of Legislative Audit or South Dakota Attorney General Medicaid Fraud Control Unit – have the legal authority to require DHS to produce records necessary to carry out audit or oversight of DHS programs or services, DHS will make such records available as a routine and recurring use.
  - v. When the appropriate DHS official determines that records are subject to disclosure under the South Dakota Public

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Records Law, DHS may make the disclosure as a routine and recurring use.

## 5. Non-routine Disclosure of an Individual's PHI

- a. For the purpose of this policy, "non-routine disclosure" means the disclosure of records outside DHS that is not compatible with the purpose for which it was collected.
- b. DHS will not disclose a client/patient's entire medical record unless the request specifically justifies why the entire medical record is needed, and applicable Federal or State laws and policy permit the disclosure of all the information in the medical record to the requestor.
- c. Requests for non-routine disclosures must be reviewed on an individual basis in accordance with the criteria set forth in the Procedure section.
- d. For Non-Routine Disclosures, DHS program areas will:
  - i. Implement procedures to limit the PHI disclosed to only the minimum amount of PHI necessary to accomplish the purpose for which the disclosure is sought; **and**
  - ii. Review requests for non-routine disclosures on an individual basis in accordance with such procedures.

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## 6. DHS' Request for a Client/Patient's PHI from another entity

When requesting PHI about a client/patient from another entity, DHS staff must limit requests to those that are reasonably necessary to accomplish the purpose for which the request is made.

- a. DHS will not request a client/patient's entire medical record unless DHS can specifically justify why the entire medical record is needed.

### **Guidance for Procedure Development:**

*The following guidelines should be used in developing procedures to implement this policy.*

#### 1. **Disclosures of a Client/Patient's PHI on a routine or recurring basis**

For Routine and Recurring Disclosures, DHS staff will:

- a. Determine who is requesting the PHI and the purpose for the request;
  - i. If the request is **not** compatible with the purpose for which it was collected, refer to and apply the "non-routine use" procedures in the following section.
- b. Confirm that the applicable DHS policies and procedures permit the requested use (disclosure is consistent with the program purposes), and that the nature or type of the use recurs (occurs on a periodic basis) within the programs or services;
- c. Identify the kind and amount of PHI that is necessary to respond to the request; **and**
- d. If the disclosure is one that must be included in the DHS accounting of disclosures, include required documentation in **DHS 2097** "Disclosures of Protected Health Information (PHI)". (See **1 (b)** above in the Policy section for a list of Uses and Disclosures that minimum necessary does not apply to and is not required to be tracked).

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## 2. Disclosures of a Client/Patient's PHI on a non-routine basis

For non-routine disclosures, DHS staff will:

- a. Determine who is requesting the PHI and the purpose for the request;
  - i. If the request **is** compatible with the purpose for which it was collected, apply the “routine and recurring use” procedures in the previous section.
- b. Determine which PHI of the client/patient is within the scope of the request, and what DHS policies and program rules apply to the requested use;
- c. If the PHI requested can be disclosed under Federal and State law and DHS policies, limit the amount of PHI to the minimum necessary to respond to the request; **and**
- d. Document all non-routine disclosures in **DHS 2097** “Disclosures of Protected Health Information (PHI)”.

### **Form(s):**

- **DHS 2097** “Disclosures of Protected Health Information (PHI)”

### **Reference(s):**

- 45 CFR 160 and 164

### **Contact(s):**

- For Central Office Staff and Field Office Staff - DHS HIPAA Privacy Office, (605) 773-5990
- For Human Services Center Staff – DHS HIPAA Privacy Contact, (605) 668-3100
- For South Dakota Developmental Center Staff – DHS HIPAA Privacy Contact, (605) 472-2400